

IDA LEE ANDERSON  
JOHN R. ANDERSON

IBLA 82-1035  
IBLA 82-1065

Decided October 5, 1982

Consolidated appeals from separate decisions of the New Mexico State Office of the Bureau of Land Management imposing a requirement for the execution of certain stipulations as a condition to the issuance of oil and gas leases NM-34840, NM-52817, NM-52819 and NM-52820.

Affirmed as modified and remanded.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Stipulations -- Secretary of the Interior

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat, the imposition of protective stipulations will be affirmed.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Stipulations -- Secretary of the Interior

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the

land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

APPEARANCES: Ida Lee Anderson and John R. Anderson, each pro se; Robert J. Uram, Esq., Santa Fe, New Mexico, Department Counsel.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

Appellants individually filed several oil and gas lease offers, identified in the caption, for lands in the Alamo Hueco-Dog Mountain Wildlife Area in New Mexico. By separate decisions in May 1982, the New Mexico State Office of the Bureau of Land Management conditioned the issuance of the leases upon the execution of certain special stipulations for the protection of desert bighorn sheep and their habitat, and for the preservation of wilderness values of those lands which are within a wilderness study area. Appellants respectively appeal from the imposition of these stipulations. Because the appeals and the pleadings are similar, the cases have been consolidated.

[1] As noted by Department counsel, appellants are well acquainted with the Department's concern for the preservation of the bighorn sheep in that area, and for the need to impose non-impairment stipulations in leases of lands in wilderness study areas, as they have been parties in previous appeals to this Board which involved the same issues. Placid Oil Co., et al., 58 IBLA 294 (1981); John R. Anderson, 57 IBLA 149 (1981); Placid Oil Co., 44 IBLA 209 (1979). See also Ted C. Findeiss, 65 IBLA 210 (1982); Rilite Aggregate Co., 26 IBLA 197 (1976).

The stipulation for the protection of the bighorn sheep reads as follows:

The lessee is given notice that all or part of the lease area contains special values, are needed for special purposes or requires special attention to prevent damage to surface resources. Any surface use or occupancy within such areas is strictly prohibited unless the lessee/operator demonstrates that the area is essential to adequately [sic] explore for or develop oil or gas, the lessee/operator submits a surface use and operations plan, and the surface management agency finds the proposed surface occupancy or use does not compromise the decision upon which the restriction is based or adversely affect the resources protected by the restriction.

Reason for Restriction:

To protect threatened and endangered species habitat.

Duration of Restriction: Year-round

Prior to acceptance of this stipulation the prospective lessee is encouraged to contact the Federal surface management agency for further information regarding the restrictive nature of this stipulation.

Department counsel, responding to the appeals, first notes that appellants failed to avail themselves of the provided opportunity to contact the surface management agency (BLM) for further information. He then states:

Both appellants complain that the leases offered to them do not specify which lands are subject to the stipulation, and that this is unfair. This complaint is partially valid. Only the stipulation for NM 52819 says to which areas within the lease the special stipulation applies (e.g. the SE 1/4, section 31, T. 31 S., R. 14 W. NMPM). When the Board returns these cases to the Bureau, it will amend the special stipulation for desert bighorn sheep (threatened and endangered species) to exclude its application from certain lands as follows:

1. NM 34840 - Exclude NW1/4NE1/4, section 7, T. 34 S., R. 15 W. NMPM.
2. NM 52820 - Exclude S1/2, section 22, S1/2SW1/4, section 23, S1/2SW1/4, section 26, NW1/4NE1/4, section 27, E1/2, section 34, section 35, T. 32 S., R. 15 W. NMPM.

These lands are not in the desert bighorn sheep area and are available for development apart from the restriction. No change will be made to NM 52817, as all of the lands are within the designated desert bighorn sheep habitat. The remainder of the land will continue to be subject to the stipulation. As the stipulation says, the exact location of lands within that area where development might be allowed can only be determined after studying a lessee's particular proposal. To the extent the appeals seek greater specificity on exact areas where properly structured development may occur within the stipulated area, their appeal should be denied. This can only be done in light of a particular development proposal.

This adjustment appears to be forthcoming and reasonable, and provides at least some of the relief which appellants are seeking. Therefore, the BLM decisions with respect to NM-34840 and NM-52820 are modified accordingly.

[2] Appellant John R. Anderson objects to the stipulation for the interim protection of the wilderness values of those lands embraced in his lease offers which are included in the wilderness study area. This Board has previously ruled in a virtually identical appeal by this same appellant concerning the same stipulation, that the stipulation is not unreasonable; that it is properly required in furtherance of the Secretary's obligation under 43 U.S.C. § 1782(c) "to manage such lands \* \* \* in a manner so as not to

impair the suitability of such areas for preservation as wilderness \* \* \*;" and we allowed appellant 20 days in which to execute the stipulation, failing which his offers would be rejected. John R. Anderson, supra. In the instant case appellant renews the same arguments he presented previously. He asserts that his offers should be suspended until BLM concludes its wilderness evaluation and sets the exact conditions as to surface use and occupancy, so that he can then decide whether to accept the leases. Appellant is reminded that it was he who chose the time to submit his offers to lease, and he is at liberty to accept the leases on the only terms by which they can now be made available, or not. We can find no justification for preserving his priority into the indefinite future, to the disadvantage of other potential offerors, until such time as the lease terms may be more to his liking. We adhere to our earlier holding in John R. Anderson, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as hereby modified, and the cases are remanded to BLM for further action consistent herewith.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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James L. Burski  
Administrative Judge

